Confidential Collection No. 43 of 40-41

year 1940--41
Cb. 145-40-1 & 2.

Subject:- Memorial addressed to His Highness the Maharaja by the president & certain other members of the Mysore Congress regarding the rejection of their candidature for election to Representative Assembly & Legislative Council and orders passed thereon.

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Collection No. 43 of 40-41

Year 1940—1941.

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CB 145-40-Pols 182

SUBJECT .... Memorial addressed to His Highness the Maharaja by the President & certain other members of the Mysore Congress regarding the rejection of their candidatures for elections to the Assembly & orders passed thereon.

PREVIOUS REFERENCES.	LATER REFERENCES.
	CB 222-41-1 (Cen. 76 of 41-)

CS 145-40-1

May it please your Highness,

We, the President and members of the Mysore Congress, beg to tender our deep-felt loyalty to the throne and person of your Highness and to bring the following few lines for your Highness' gracious consideration.

1) The Mysore Congress is a Political Institution in the State whose objective is the establishment of full Responsible Government under the aegis of the Ruler by all truthful and non-violent means. It has been recognised as such by your Highness' Government in their Order No. 3862-3931-C.B., Mysore dated, the 17th May, 1938.

2) The political training which the people of Mysore had been receiving since the establishment of the Representative Assembly in 1881 by your Highness' revered grand father and of the Legislative Council in 1907 by your Highness' illustrious uncle and of the various Local Bodies, Standing Committees, Economic Conferences and the like during the several decades preceeding, quickened with the political awakening in the Provinces consequent on the Minto-Morley Reforms. A similar agitation started in Mysore resulted in certain Reforms which even then were considered unsatisfactory. Although the Provinces made a rapid advance through the Montague-Chelmsford Reforms of 1919 to the Provincial Autonomy of 1935, the desire of the people of Mysore for Responsible Government received

received no consideration at the hands of the Government whose attitude became definitely set against any Reforms. Parties working towards the same goal eventually coalesced into the Mysore Congress whose determined stand at Shivapura in honour of the National Flag was followed by the people all over the State including Viduraswatha where a few over-zealous Officers opened fire on an innocent crowd and shot people dead. Great sorrow and indignation prevailed all over the country. Then came the auspicious event of your Highness' marriage on which occasion peace and harmony were restored in the public life of the country by an agreement, between the Government and the Congress, recognising the latter and conferring certain rights on it.

(4) It is unfortunate that the Government resiled from the agreement and made every attempt to belittle the Congress. As a mild mark of protest the Mysore Congress withdrew from the Reforms Committee, the Legislature and the Local Bodies and asked for an interview with the Dewan which the latter refused and followed up by a round up of the Congress leaders. That led to a State-wide agitation by the people in support of the Congress demand. Nearly three thousand people were arrested and thousands courted imprisonment.

(5) They were offering Satyagraha in support of a legitimat demand for a better system of administration; but the authorities treated them unjustly. It would be a long narration to set forth the variety of hardships to which these political prisoners were subjected. Three of them died as a result of such ill-treatment.

(6) At that time the Government encouraged some friends to secure Mahatma Gandhi's mediation. Congress agreed and came directly under the guidance of Mahatmaji. The Government, however, resiled once again and has since been carrying

carrying on a campaign of vilification against the - - Congress, characterising it as a group of a few discontented individuals.

7) The Congress, on the other hand, has suspended Satyagraha; and with a view to prove the enormous popular support behind it, it has been participating in the elections to the Local Bodies and the Houses of Legislature. Given a fair field, Congress was certain to sweep the polls and belie the accusation against it. With a view to defeat the Congress, Officers, high and low, abused their positions in unjustly interfering with the purity of the elections, threatening people against having anything to do with the Congress. Nevertheless, the Congress captured 119 out of 134 seats which it contested at the District Board Elections. The authorities nominated several of the defeated candidates, empowered officials to vote and commandeered votes against the Congress in the election of the Presidents of the District Boards. Even so three of the District Boards have been captured by the Congress.

8) Several successful Congress Candidates have been victimised by being removed from honorary offices such as membership of Rural Water Supply Committee, Chairmanship of Village Panchayet, Dharmadarsi of Temple and so on. These have happened largely in Kolar district. In Hassan district ballot boxes were opened and many Patels, Shanbogues, School Masters, Contractors, petty Officials and others have been victimised for having voted in favour of Congress Candidates. The public have been terrorised into keeping away from the Congress and encouraged to oppose it. In the name of Ryots' Conferences even high Officers have been indulging in veiled and sometimes open vilification of the Congress, forgetful of the circumstance that it is an Institution recognised by

by the Government. The attitude of the Government is responsible for all this bitterness in the public life of the country; and it is sad that inspite of the best efforts of the Congress to befriend the Government, the latter should be so hostile and so bitter.

9) The President of the Mysore Congress wrote four letters to the Chief Secretary to Government complaining of the unjust interference by officials in opposition to the Congress. We regret to bring to your Highness' notice that the Chief Secretary has not had even the courtesy to acknowledge the letters, much less to favour us with a reply.

10) The Congress, however, has maintained an atmosphere of friendliness on its part. It participated in the elections to the various Municipalities in most of which it has secured over-whelming majorities. These elections, particularly in the Cities of Bangalore and Mysore - where every contested seat without a single exception fell to the Congress, have proved the enormous popular support behind the Congress and its demand for the establishment of Responsible Government in the State.

11) Once again, and even more so than before, the authorities have bestirred themselves to defeat the Congress at the elections to the Assembly and the Council. Our election campaign is obstructed officially in a variety of ways. Innumerable Prohibitory Orders are being passed almost in every part of the State preventing meetings, processions, music, tom-tom, propagandistic slogans, use of loud-speakers and so on. Amildars and Sub-Division Officers go about with rival candidates canvassing support for them as against Congress candidates. Ryots' Conferences, Cattle Shows, Jatras and similar gatherings are called under official auspices and rival candidates held up for public support as

as against Congress candidates. People are threatened and coerced into opposing the Congress and everything is done to terrorise them into keeping aloof from the Congress. The injustice is daily growing and is becoming a menace, to the freedom and purity of the elections.

(14) Not content with such unjust interference with the election propaganda, the authorities have made a drive against the Congress candidates so as to defeat many of them - nearly a third of their number, from standing at all as candidates. Though most of our Congress leaders are unnecessarily and unjustly held disqualified and the names of prominent Congress Workers omitted deliberately in the final list of voters, the Congress put up 232 candidates for the Assembly out of a total of 298 seats open for election and 30 to the Legislative Council out of the available 44. In the name of scrutiny of the notices of candidature, nearly 80 of the Assembly and 10 of the Council have been thrown out. The reasons given for rejection of these notices are trivial and meticulously technical such as the failure to mention the exact date of birth, to give the age in years, months and days, to sign one's name exactly as it appears in the Voters' List though there could be no doubt whatever about the identity and so on. We beg to append a list of such objections so far as they could be ascertained; for, no endorsements or copies of the Orders would be given though asked for and though Parties are entitled to the same. It may be mentioned that almost all the applications of the Congress candidates in Mandya and Chitaldrug districts have been rejected as also about half the number in Kolar and Kadur districts. The Government who were approached for redress through about 60 applications seemed at first to realise the enormity of the rejections and had decided to Order re-scrutiny. But they have finally decided to reject the applications on the ground that the Orders rejecting the notices of candidature are judicial and could be tested before an election tribunal or in a Civil Court.

13) It is humbly submitted that the view taken by the Government is incorrect. Under Rule 203 of the Assembly Rules and Rule 182 of the Council Rules, the Government have power vested in them to interpret the rules properly and to direct re-scrutiny in the light of such interpretation. The aggrieved candidates and the electors in their support are entitled to the cheap and expeditious remedy provided in such manner.

14) The suggestion that election petitions may be filed is neither tenable nor reasonable. No election petition can be filed at the present stage in view of the Assembly and Council Rules. In many cases elections have yet to be held and in all cases publication has to be made by Government before the right accrues in favour of any one to file an election petition. To ask that candidates should wait till the right accrues and then seek the remedy is hardly reasonable. Chief Justice Schwabe of the Madras High Court has observed on this point in 1923 Madras 475 as follows:-- "I do not think that the law is such that the plaintiff must wait until the election is held and then bring an election petition which is bound to suceed; nor indeed would that remedy give him all that he is entitled to, because after the election petition had succeeded there would have to be fresh nominations and there might be other candidates in the field that he would not now have to meet, to say nothing of the trouble and expenses that he would necessarily be put to". So too has Justice Wallace observed in the same case:- "I am quite clear that any post-election remedy is wholely inadequate to afford the relief which the petitioner seeks. It is no consolation to tell him that he can stand for some other election. It is no remedy to tell him that he must let the election go on and then have it set aside by petition and have a fresh election ordered. The fresh election may be under altogether different conditions and may bring forward an array of fresh

fresh candidates". The remedy by way of election petitions is costly, each petitioner having to deposit Rs. 100/- while filing the petition; and there are so many of them. It is also a dilatory process as in the nature of things it must be. It ought not to be forced on a candidate by denying him the cheaper and the more expeditious remedy available under the Rules. Besides if, as is admitted on most hands, the rejections are improper, many of the elections now to be held at great expense of public time and money will necessarily have to be set aside involving public waste and needless excitement, subjecting the people and the candidates to further expense and anxiety. We humbly submit that the suggestion regarding - election petitions is inequitable.

15) There is no remedy by way of Civil suit either. Rule 159 of the Assembly Rules and Rule 138 of the Council Rules. prohibit suits being filed in the matter.

16) Thus interference by Government is the only remedy available in law and if that is denied the parties will be subjected to great injustice.

17) These rejections and the failure on the part of the Government to redress them, inspite of the lack of uniformity in the interpretations by Returning Officers and the consequent injustice to many candidates, have created public dis-satisfaction among your Highness' subjects and we humbly pray that your Highness may be graciously pleased to redress the grave wrong caused to a large number of citizens in the State by reason of such unjust rejections of the notices of candidature, and the failure of the Government to afford relief inspite of repeated attempts to secure the same.

18) We beg leave to state that the hopes of the people are centred in your Highness. Your Highness' inspiring message on the occasion of your Highness' Installation, your Highness' noble utterance at the opening of the Political

Political Conference and the many gracious acts of your Highness in furtherance of the interests of the people have inspired your Highness' subjects with every hope of redress at your Highness' hands.

19) We beg to conclude by assuring your Highness of the devotion and loyalty of the Mysore Congress, its thousands of members and the millions of your Highness' subjects whom it seeks to represent and serve, to the throne and person of your Highness,

We beg leave to remain,

tns/-

Your Highness' most devoted & loyal Subjects,

T. Bhashyam.
K. Pattabhi Raman.
K. Sampangi Ramaiya
K. Chengalaraya Reddy.

Bangalore,
Dated: 26.1.41

A P P E N D I X.

The following are some of the grounds on which notices of candidature have been rejected:---

1. (a) Age and year of birth are given but not the date of birth.

(b) Age and date of birth are given but the latter is held not to correspond with information obtainable from other sources though there can be no doubt that the applicant has reached the prescribed age limit to stand as a candidate.

(c) Age and date of birth are given but age is not mentioned in years, months and days. Month of birth is given in words but not in figures.

(d) Age and date of birth are given but age is held not to be correctly computed -e.g., Age computed on the basis of next birth day is held defective.

(e) Age only is given without date of birth, age on all accounts being much above the minimum limit for candidature.

2. The denomination of the applicant was given as "Hindu", "Vokkaliga", "Veerasaiva", "Brahmin", "Depressed Classes",etc. The direction in the candidature form required the applicant to state whether he was a Mohammedan, European, Anglo-Indian or Christian or belonging to General Community. It may be stated that "Hindu", "Brahmin", "Vokkaliga", "Veerasaiva", "Depressed Classes", belong to General Community. "Vokkaliga" - General Community", is also held defective.

3. The name of the Constituency is not meticulously correct though there can be no doubt about the same, considered along with other attendant particulars given in the application and

and the Treasury Challan accompanying it.

4. The sex of the applicant is not actually written in words against the appropriate column though the alternate sex in the form is struck off as follows:-- (Male/~~Female~~)

5. Trivial grounds pertaining to the name of candidates:

a) The candidate has signed "B. Ramiah" whereas in the Voters' list it is "Bellur Ramiah".

b) The candidate has signed "Indiramma" whereas in the Voters' list it is "Indirammanavaru". "Navaru" is a suffix of respectability like "Garu" or "Avergal".

c) "Muniyappa son of Chinna Muniyappa" as mentioned in the Voters' list signs as "Muniyappa son of Chikka Muniyappa". "Chinna" is Telugu for "Chikka" in Kannada and the identity is beyond all doubt.

6. A candidate gives her mother's name instead of the father's or husband's name.

7. When giving the voter's No. in the list, the sub-division of the constituency in which the candidate desires to stand is not given. The numbers are continued serially for the entire constituency and there can be no mistaking either the constituency or the identity of the candidate.

8. The candidate appoints more than one election Agent.

9. The applications have been filed on the days previous to the last day for filing nomination papers after 3 p.m., though the Returning Officers received them.

10. Though the candidate resides in the constituency and has been included in the Voters' list as such and there are besides innumerable documentary proofs of such residence, the Returning Officer arbitrarily declares that the candidate is

is not residing in the Constituency and rejects the notice of candidature.

N O T E:- In some instances notices were held valid on the date of scrutiny but the next day they have been rejected and the grounds of such rejection are not known and vice versa.

Objections raised against non-Congress candidates' applications have been mostly over-ruled while objections against applications of Congress candidates have been generally upheld even without any evidence in support of the objections.

It may be noted that Returning Officers have refused in most cases to give endorsements or copies of their orders though Parties are entitled to the same.

tns/- ******** K.T. Bhashyam.

It is stated in paragraph 2 of the memorial that the Government have recognised the Congress as a political institution whose objective is the establishment of full responsible government under the aegis of His Highness the Maharaja by all "truthful and non-violent" means. According to the Government Order dated 17th May 1938, Government were prepared to recognise the Mysore State Congress as a political organisation, as it was made to appear that the Congress was prepared to co-operate with the Government in the task of constitutional reform. Since then the Congress made no genuine attempts to carry out its obligations. In fact, this party neither co-operated with the Government in the task of formulating constitutional reforms, nor did they choose to adopt constitutitonal methods of agitation. They resorted openly to charge the Government with breaking their pledge and refused to co-operate with the Reforms Committee. Their allegation that the attitude of Government had been "definitely set against any reforms" is not borne out by the facts, as is evidenced by paragraph 69 of the Government Order dated 6th November 1939 on Constitutional Reforms in Mysore, in which it was stated clearly that it was the definite policy of His Highness's Government to provide for an increasing association of the people with the Government in the administration of the State and that the constitution will continue to develop by natural process determined by reason and reality. As stated by the Constitutional Reforms Committee, the principle which has inspired all constitutional developments in Mysore was first indicated in the Government Order of 25th August 1881 calling into being the Mysore Representative Assembly with the avowed object of ensuring that the views and

objects which the Government had in view in the measures adopted for the administration of the State were better known and appreciated by the people and of convincing them that the interests of the Government were identical with those of the people. In the successive schemes of reform that have been introduced from time to time this policy has found progressive fulfilment.

It is mentioned in para 3 of the memorial that "a few over-zealous officers opened fire on an innocent crowd and shot people dead" at Viduraswatha. This, again, is a travesty of fact. It is a matter of history that the incidents were subjected to a thorough and detailed investigation by a committee of judicial officers of unimpeachable authority and impartiality over which presided Sir Vepa Ramesam, an ex-Judge of the Madras High Court. The Committee sat for nearly 6 months, examined about 150 witnesses and found that "a campaign of unparalleled violence, which was conducted without any regard to truth, was responsible for the gathering of the crowd which had nothing to do with the Viduraswatha festival; that the District Officers had at their disposal a force that was inadequate for dealing with so large a crowd; that, in the circumstances of the situation, once the crowd had attacked them, it was inevitable that they should resort to firing in self-defence and that the firing was not excessive". The Committee's exhaustive report is a complete and convincing refutation of the reckless allegation in the memorial that the police opened fire on an innocent crowd and that the firing was unjustified.

Para 4 of the memorial says that Government resiled from the "agreement" between them and the Congress and made every attempt to belittle the Congress. Evidently, the reference is to the Government

Order of 17th May 1938 where the policy of Government in relation to the Congress was enunciated. There was no question at all of any agreement between the Congress as such and Government; it was only a question of mutual understanding, Government agreeing to recognise the State Congress as a political organisation on the understanding that that body would co-operate with Government in the task of constitutional reform and that it would act as a political body formed within the State and composed of the subjects of His Highness the Maharaja and that it intended to carry on its work in a peaceful, legitimate and constitutional manner. The Order of May 1938 was nothing more than an attempt on the part of Government to remove the misconceptions that had existed in the public mind and to enunciate clearly the policy which they had been pursuing all these years of availing themselves fully and of the services and co-operation of all sections of His Highness's subjects. Under the terms of this Order, Government agreed to add to the personnel of the Constitutional Reforms Committee three new members to be selected by the Congress . Meanwhile, a new situation arose. Mr. Bhupalam Chandrasekhara Setty was not one of the three members who were added to the Committee, at the instance of the Congress party, but he was one of those who had been appointed to that body by Government themselves at the time the Committee was set up. Mr. Chandrasekhara Setty happened to resign from the Congress, and the Congress thereupon wrote a letter to Government on the 4th January 1939 saying that Mr. Chandrasekhara Setty had ceased to be a member of the Congress and that Government might appoint in his place another

Congressmen elected by the Congress to serve on the Committee. As the Government could not in fairness compel Mr. Chandrasekhara Setty to resign from the Reforms Committee at the suggestion of the Congress party, the Congress misrepresented this as a breach of pledge on the part of Government. Subsequently, they withdrew all their representatives from the Reforms Committee, the Legislative Council, the Representative Assembly, District Boards and Municipalities, and began a propaganda on what they called strictly non-violent lines but in reality little distinguishable from violence and deliberate vilification of Government.

In July 1939 the President of the Congress addressed a letter to the Dewan in which he stated that the Congress had decided that an approach should be made to Government to see if an honourable settlement could not be arrived at and that he would be glad to meet the Dewan at any time convenient to him to discuss the matter. The atmosphere at the time was the reverse of peaceful, as is evident from the meetings convened at various places by the Congress at which Government were attacked and their officers abused in language which does not bear repetition. Even most beneficient and well-meant measures of Government were subjected to ridicule. In such circumstances it was considered that no useful purpose would be served by meeting the President of the Congress, especially as that body had failed to implement its part of the understanding, and the Dewan declined to see the President.

Para 5 of the memorial says that the 'satya-grahis' were being treated unjustly by Government and

that three of them died as the result of such ill-treatment. In the latter part of 1939, the Congress had for sometime been making sensational allegations of ill-treatment of satyagrahis by Police and other subordinate officers. As these allegations, if true, were of a serious nature, Mr. Justice Nageswara Iyer was appointed in January 1940 to enquire into the matter and submit a report to Government. Although every opportunity was given by him to all classes of His Highness's subjects to come forward and give evidence before him, the Congress did not care to tender any evidence to substantiate the serious charges that had been levelled against some officers of Government. But the Special Inquiry Officer went about his task and sifted the allegations thoroughly. He visited the jails where the prisoners had been undergoing sentences of imprisonment, held 25 sittings, examined 90 witnesses including 53 non-officials of whom 17 were persons who had taken part in the movement and came to the conclusion that "in no instance has an allegation of torture or ill-treatment of an arrested person, in order to induce him to apologise for his conduct or for any other purpose, been made out". "Nor is it found" he added "that any such person was put to undue hardship by improper accommodation while a prisoner, or by being left in a forest tract or an uninhabited area. One thing about this inquiry which is worth noting here is that Mr. Nageswara Iyer found that most of the persons who made accusations of assault and torture did not attempt to establish those charges notwithstanding the facilities offered to them. The statement that three of the satyagrahis died as the result of ill-treatment is not borne out by facts. It is true that one Prahlada Setty who was undergoing imprison-

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at Byramangala and who had an attack of typhoid and was removed to the Victoria Hospital for treatment died there nearly six weeks later notwithstanding the best medical aid given and it cannot therefore be said that his death was due to ill-treatment.

Para 6 of the memorial contains an allegation that "Government have been carrying on a campaign of vilification against the Congress". On the face of it this is untrue. On the other hand the position is just the other wq way about. It is somewhat amusing that the Congress should put forward this charge with an air of injured innocence when the real fact of the matter is that abuse of Government and its officers has been the predominant note in all the speeches of Congress leaders. A perusal of the collection of the speeches reported from time to time will clearly indicate to what extent their grievance is real. Some of the speeches were of such a character that Government had to sanction several prosecutions under Section 124 A I.P.C. In this connection it would not be out of place if reference is made to the observations made by the Chief Justice in the disposal of references made to the High Court under the Legal Practitioners' Act against some of the leading members of the Congress Party.

In the next para it is stated that the Congress captured 119 out of 134 seats which it contested at the recent District Board elections. They have evidently realised that it would be foolish to keep out of the local bodies and leave the field to their opponents without contest. Their success is an unmistakable indication of the fact that the Government officers could not have interfered in the elections to the local bodies,

a position which is the reverse of what is maintained by the Congress. For if the officers of Government had really interfered with the elections in the manner alleged the result would probably have been different. The memorialists are thus contradicting themselves when they make it appear that the officers of Government threatened the people against voting for its candidates and that they abused their position in interfering with the elections.

As regards the statement that Government have nominated several candidates who were defeated at the recent elections to some local bodies, it may be stated that, in the first place, instances of such nominations are not many. Further, there is nothing which debars Government from nominating such candidates when they are of opinion that the local bodies themselves stand to benefit by such nominations. It is unfair to suggest that Government intend to go behind the verdict of the electorate by nominating defeated candidates. It is not seldom that cases arise of persons who are eminently fitted to serve the public as members of local bodies happen to be defeated by snatch votes. In such cases it would obviously be undesirable that the experience and guidance of these defeated candidates should be wholly lost to the local bodies concerned. It is however recognised that it would be inexpedient to exercise their power to nominate defeated candidates on any large scale and this is done only in exceptional cases.

In regard to the removal of certain members.

from Honorary offices in the Kolar District, in the absence of special complaints, it is not possible to say that the action was taken in pursuance of a definite policy.

As regards the allegation that the secrecy of the ballot box has been violated, it may be mentioned that in some instances the voting slips in the ballot boxes were scrutinised in the Hassan District at the time of destruction of these records. Such a thing has not happened in any other District, and instructions have since been issued to the various officers to ensure that there will be no ground for any criticism that the ballot boxes have been tampered with in future.

It is stated that high officers of Government have been indulging in the vilification of the Congress at the Ryots' Conferences. This allegation is vague and baseless and it may be stated in this connection that Ryots' Conferences, or as they are called Taluk Conferences, are held for the well-known and well understood purpose of creating contacts between the officers of Government and the public and of explaining the policies of Government and of ascertaining the local wants and grievances at first hand.

Para 9 refers to the fact that the Congress President wrote to the Chief Secretary four letters none of which was acknowledged. The letters referred to were written by the President of the Congress to Government making allegations of official interference in connection with the elections to District Boards. As this was a matter in which the aggrieved persons had to complain, and as a declaration

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of policy was demanded, Government after due consideration decided that no reply should be sent.

The rest of the memorial deals with the complaint that Government are adopting tactical methods and openly carrying on a campaign against the Congress in connection with the elections to the Assembly and the Council. A note on this subject has already been submitted by the Law Secretary.

It may be stated in conclusion that though some of the details which have been given in the foregoing paragraphs are not strictly relevant to the substance of the allegations made in the memorial regarding the rejection of nomination papers of certain candidates for election to the Representative Assembly and the Legislative Council, they are set forth because they serve as a kind of background against which allegations and complaints emanating from the Congress should be judged.

1.2.41

LAW SECRETARY'S NOTE ON GOVERNMENT'S INTERFERENCE
THE DECISIONS OF RETURNING OFFICERS.

The Government of Mysore issued a calendar under Rule 65 of the L.C. Rules for the conduct of election and 3rd January 1941 was fixed as the date on or before which notices of candidature were to be presented. The applicants filed their notices of candidature on or before that date. According to the calendar a further date for scrutiny of notices of candidature viz., 10th January 1941 had been fixed. On that day the Returning Officers of various constituencies scrutinized these notices of candidature under Rule 76 and completed the scrutiny on that very day as required by Rule 77. The Returning Officers rejected some of the applications on various grounds and many of them under Rule 76 (1) (b) as, according to their view, the notices of candidature had not been completed in the manner prescribed in form No.III. According to the calendar, 11th January 1941 was fixed as the date for withdrawal of candidature and the Returning Officers under Rule 79 notified the withdrawal of such candidates who did so and finally under Rule 80 L.C. published the list of candidates on the 16th January 1941.

The Returning Officers followed the procedure laid down in Rule 81 and declared such of the candidates as elected where the number of candidates was equal to the number of seats to be filled.

The petitioners approached the Government and prayed that the orders of the Returning Officers rejecting their notices of candidature may be set aside and their names be included in the list of candidates published or to be published by the Returning Officers, under Rule 80.

Most of the petitioners invoked the aid of Rule

182 of the L.C. Rules or the corresponding Rule 203 of the R.A. Rules for the relief which they want the Government to grant.

The rules as framed do provide a specific remedy to such candidates whose notices of candidature have been rejected, viz., a right to present an election petition under rule 151 of the L.C. Rules which reads as follows:-

> "An election petition against any returned candidate may be presented to the Government--
>
> (a) by any candidate or elector on any ground;
>
> (b) by an officer empowered in that behalf by the Government on the ground that the election has not been a free election by reason of the large number of cases in which undue influence or bribery has been exercised or committed."

The time limit for the presentation of the petition is fixed by Rule 152 L.C. and unless the Government dismisses the petition, an election commissioner for the trial of such a petition has to be appointed under Rule 157 to hold an enquiry. The Commissioner after enquiry can declare an election void on grounds mentioned in Rule 166. Clause (1) (c) of the said rule empowers him to declare an election void, if the result of the election had been materially affected by the improper acceptance or rejection of any notice of candidature. It is open to the applicants if they are so disposed to challenge the validity of the Returning Officer's decision in refusing to accept their notices of candidature by way of election petitions.

The petitioners contend that the Government can interfere with the decisions of the Returning Officers rejecting their notices of candidature under Rule 182 of the L.C. and the corresponding Rule 203 of the R.A. Rules. Rule 182 runs as follows:-

> "If any question arises as to the interpretation of these rules otherwise than in connection with an election enquiry held under the provisions of these rules, the question shall be referred for the decision of the Government, and its decision shall be final."

As this question does not arise in connection with an election petition, it is contended that it is just and proper that the Government should interfere at this stage before the election takes place and rectify the errors alleged to have been committed by the Returning Officers.

Mr. K.T. Bhasyam Iyengar mainly relies on the decision of the Madras High Court in Sarvothama Rao v. The Chairman, Municipal Council, Saidapet, (1923 Madras 475) for the proposition that there is no need for the petitioners to wait until the election is held and then bring an election petition which is bound to succeed and he further urges that that remedy would not give all that the petitioners are entitled to, because after the election petition had succeeded there would have to be fresh nominations and there might be other candidates in the field that he would not now have to meet, to say nothing of the trouble and the expenses that the petitioners would necessarily be put to. This decision relates to the rejection of nomination papers by a Returning Officer in connection with the municipal elections of Saidapet. While the election was going on, the candidate whose nomination paper was rejected filed a suit under the District Municipalities Act V of 1920. It is no doubt true that both the Chief

Justice and Justice Wallace do hold that the local government could interfere and that the remedy provided by the rules of resorting to an election petition was not an efficacious one besides being costly.

Rule 31 of the Election Rules under the District Municipalities Act, Madras, is very similar to Rule 181 of our L.C. Rules and the observations of the Learned Judge with respect to the said rule are as follows (page 478, 1923 Madras):-

> "That is, the local government, which drafted the rules, is the final arbiter for deciding what the rules mean, and the Civil Court cannot ordinarily be asked to decide whether the local government's interpretation of its own rules is right or wrong.
>
> "There is, however, in one of these cases, Civil Revision Petition No.705, the peculiar feature, which was disclosed to us only towards the close of the argument before us, namely, that the petitioner, had, after the unfavourable ruling of the Chairman, made a reference to local government and asked it to interpret the rules and revise the Chairman's order and permit his nomination and that the government's answer was that it declined to interfere. The answer is before us and on its face it is not clear on what grounds the Government declined to interfere, but the letter also before us produced by the Government ~~Secretary~~ Solicitor on 18th December 1922, makes it clear that the refusal to interfere was on the ground that the local government had no jurisdiction, Government apparently holding that, while a reference can be made in such a case under R.31, it cannot be made by a private party, but only by the Chairman. I am myself unable to read R.31, so, and, so long as it is read so, so long will an aggrieved candidate be driven for his remedy to the cumbrous method of a civil suit and an injunction. The net result, however, is that the Government conceived that it had no jurisdiction and therefore declined to function as the judicial or quasi-judicial tribunal it was intended to be, because it thought that the case had not been properly brought before it."

The learned Judge opined that as the local government failed to exercise the jurisdiction vested in them a remedy by way of injunction was available to the party

party.

In connection with the construction of a rule similar to Rule 31, Madras District Municipalities Act, Richardson, J. in Manindra Chandra Nandi Vs. Provas Chandra Mitter and others, 1924 Calcutta, 761, remarks thus at page 769:-

> "In the second place, the rules themselves provide the method by which question of doubt or difficulty as to their interpretation are to be solved. Rule 48 (Bengal Electoral Rules) prescribes that: 'If any question arises as to the interpretation of these Rules otherwise than in connection with an election enquiry held thereunder, the question shall be referred for the decision of the Governor, and his decision shall be final.' It seems that the Returning Officer was asked to make reference under this rule, but the request does not appear to have been pressed and the application which has since been made to the High Court, and which is now before us in appeal, is not that the Returning Officer should be compelled to make a reference. If in a proper case the Returning Officer should decline to make a reference or, speaking with the very greatest respect in regard to a contingency so improbable, if the Government should decline to decide a reference properly made to him, it would then be time enough to have recourse to the provisions of S.45 of the Specific Relief Act."

According to this learned Judge there must be a proper reference from the Returning Officer to the Government and it is then that the Governor would get jurisdiction to give his interpretation of the rules which would become final. The wordings in Rule 182 L.C. come nearer the interpretation given by Mr. Richardson J. than that of Wallace J.

It has to be noticed that the decision in 1923 Madras 475, makes a difference between those cases in which by virtue of the rejection of the notices of candidature other candidates have been declared elected and those in which the election have to go on without including the candidates

whose applications have been rejected. In the former case, that is, where the Returning Officers have declared the results of elections, the only remedy open to a candidate whose notice of candidature has been rejected is by way of an election petition. Thi is clear from the observations of Wallace J.,at page 479 which run as follows:-

> "This ground is that all the three suits are barred because the petitioners have their remedy by way of election petitions. In the case of Civil Revision Petitions Nos.758 and 828, I am clear that this is a good objection. Elections have been held and there is a tribunal set up by the Rules for the decision of petitioners to set aside the election, a tribunal whose decision under the rules is final. The Statute itself therefore provides the remedy and the statutory tribunal has not refused jurisdiction. The ordinary Civil Court therefore has at present no jurisdiction. In my opinion for this reason also these two suits are not maintainable in the Civil Court."

It becomes quite clear that so far as those cases where the Returning Officers have made declarations having rejected the notice of candidature, the only remedy left open to the parties according to the views of all the High Courts is by means of election petitions provided for by the Rules (Rules 150 - 151 of the L.C.Rules). That being so, the Government cannot interfere with the decisions of the Returning Officers where the candidates have been duly declared elected.

The view taken by the Madras High Court in Sarvothama Rao's case referred to above with respect to the constituencies where polling has to take place has not been adhered to in the later decisions of the same High Court and has been expressly dissented from by the Allahabad High Court -- Joti Prasad v. Amba Prasad, 1933 Allahabad 358.

In 1928 Madras 1271 where a similar question came up before the High Court, Justice Wallace

who was a party to the earlier judgment refused to interfere with the scrutiny of nominations on the ground that the petitioner's remedy was by way of an election petition as long as the Returning Officer was not going outside his jurisdiction in interpreting the rules whether rightly or wrongly. His Lordship's observations at page 1272 are pertinent and are as follows:-

> "The petitioner is not without his remedy. His remedy lies in an election petition which we understand he has already put in. It is argued for him that remedy which merely allows him to have set aside an election once held is not as efficacious as the one which would enable him to stop the election altogether; and certain observations at p.600 of Sarvothama Rao v. Chairman, Municipal Council, Saidapet (1), are quoted. In the first place, we do not see how the mere fact that the petitioner cannot get the election stopped and has his remedy only after it is over by an election petition, will in itself confer on him any rights to obtain a writ. In the second place, these observations were directed to the consideration of the propriety of an injunction in a civil suit, a matter with which we are not here concerned. And finally it may be observed that these remarks were made some years ago when the practice of individuals coming forward to stop elections in order that their own individual interest may be safeguarded was not so common. It is clear that there is another side of the question to be considered, namely, the inconvenience to the public administration of having elections and the business of Local Boards held up while individuals prosecute their individual grievances. We understand the election for the elective seats in this Union has been held up since 31st May because of this petition, the result being that the electors have been unable since then to have any representation on the Board, and the Board is functioning, if indeed it is functioning with a mere nominated fraction of its total strength; and this state of affairs the petitioner proposes to have continued until his own personal grievance is satisfied..."

These observations are referred and followed by Beasley,C.J. and Cornish,J. in 1932 Madras 321. The learned Judges come to the conclusion that when the Act gives an Election Officer jurisdiction to examine the nomination papers and scrutinize them and listen to objections and having listened to

those objections to decide whether the nomination papers are to be received or rejected, the High Court cannot interfere with his decision by a certiorari even if he were wrong as he had jurisdiction to make the order and as that is a matter in which a remedy is provided by means of an election petition. The argument that an election petition was not an efficacious remedy and it was unjust to relegate the petitioner to that remedy because all manner of things unfavourable to him might happen in the meantime was not accepted.

The function of a Returning Officer in deciding a question as to the eligibility of a candidate for election is in the nature of a judicial function and his decision is in the nature of a judicial decision. This is clearly established by the decision of Sanderson,C.J. and Richardson,J. in 1924 Calcutta 761. It is clear that when the High Courts refuse to interfere either through an injunction or a writ of certiorari or make an order in the nature of a mandamus for the purpose of setting aside the decision given by a Returning Officer, it may not be proper for the Government to butt in at that stage and substitute their opinion for that of the Returning Officer.

The points raised by the petitioners are debatable and the proper forum to decide these questions is the Election Commissioner provided for by the rules. If this extraordinary power is invoked and the decision as to the interpretation of the rules be given which becomes final the petitioners would lose their remedy of approaching the Election Commissioner and it is well that

the Government should avoid such a contingency.

It has been suggested that the rules may be amended so as to empower the Government to set aside the decision of the Returning Officers and cancel the declarations made by them. But any such rule now made cannot have retrospective effect and cannot annul the rights created in those candidates who have been declared elected and perhaps any interference on the part of the Government at this stage when elections are fixed ~~to take place on the 8th February 1942, may lead~~ to take place on the 8th February 1941, may lead to complications and the petitioners may well be left to resort to the remedy provided under the rules and if they so desire an Election Commissioner may be appointed early.

It may also be noticed that no suit lies in a court of law either for an injunction or for any relief for acts done under the rules as such a jurisdiction is ousted by virtue of Rule 138 (L.C. Rules) which runs as follows:-

> "Save as otherwise provided in the Act or in these rules, no act done or proceedings taken under, or with reference to, the rules contained in this Chapter shall be called in question by means of suit or otherwise in a court of law."

The elaborate discussion in the decisions of the various High Courts mentioned above regarding the right of suit are not material in this State by the existence of Rule 138.

Some of the candidates whose notices of candidature to the Representative Assembly and Legislative Council had been rejected as a result of the scrutiny which took place on the 11th January 1941, requested Government to intervene and set right the injustic that was alleged to have been caused to them. They complained that the reasons for rejection were trivial and urged that the rules governing the completion of the notice of candidature should have been more liberally interpreted. A number of petitions were received in this connection by Government who, after due consideration, decided that it was best not to interfere with the orders passed by the Returning Officers. The petitioners were informed accordingly. In my concluding speech at the last session of the Legislative Council, I explained the position of Government in the following words:-

> "A number of persons who have stood for the new elections have complained that their nomination papers have been rejected for what are alleged to be technical, if not trivial, reasons and have approached Government with a request that the decisions of the Returning Officers in certain respects should be reviewed. Government have given the matter careful consideration and have come to the conclusion that it would not be proper or legal for them to arrogate to themselves the functions of an election tribunal. For Government to undertake, as they were urged to do, a retrospective interpretation of the Rules could only confuse and retard election proceedings and would be inconsistent with the attitude of detachment which they must maintain in such matters."

The Congress party, which has been chiefly (though not exclusively) affected by these rejections, has been agitating in the newspapers and otherwise for a revision of the decision of Government and has now submitted a memorial to His Highness the Maharaja.

The accompanying office note gives an analysis of the present position as regards the election proceedings. The opinion of the Law Secretary on the several suggestions that have been put forward by the Congress and its friends is also kept in the file.

Consequent on the rejection of some of the notices of candidature, 10 candidates for the Legislative Council and 61 for the Representative Assembly were declared on the 11th January 1941 to have been duly elected unopposed. Including other elections

that have taken place without any dispute, no less than 23 seats in the Legislative Council and 102 seats in the Representative Assembly have so far been filled up and the results are about to be notified in the Gazette. For the Government to order a re-scrutiny of the notices of candidature in such cases would be tantamount to declaring the elections void. The persons who, rightly or wrongly, have been returned, must be deemed to have acquired a right, which it would be improper to disturb except in due course of law and an election petition, according to all authorities, is the only remedy available.

In the majority of general constituencies, however, the elections have yet to take place next month and the Mysore Congress want that at least in these cases where the elections are not concluded, the persons who were wrongly rejected should be given a chance of contesting the seats without having to file and await a decision upon their election petitions. But, as will be evident from the accompanying note of the Law Sscretary, compliance with this request is also beset with difficulties although no accrued rights are involved.

We have all along assumed that it was unjust to reject a person's notice of candidature for the reasons (a) that he had given only his age or the date of birth but not both and (b) that he had failed to specify his denomination as "general community" provided it was clear, in the first case, that the age as given in or deduced from the notice was substantially correct and, in the second case, that the actual words used left no doubt whatever to which community the candidate belonged.

The cases of rejection are not all, however, of such a simple character. Some of them involve points of substance as well as of form. The appendix to the memorial gives a variety of reasons for which notices of candidature were rejected. To examine the validity of these reasons and to ensure that all candidates are treated fairly and in a uniform manner, means the

reviewing, individually, of the orders passed by the Returning Officers, a task which it would be inappropriate for Government to undertake.

In a leading article apparently based on material supplied by the Mysore Congress, the Hindu of the 23rd January 1941 says:-

> "If the facts as set forth above are correct, then the duty of the Government is clear. They should not wait for proceedings to be taken before election tribunals which are bound to be prolonged and costly. It has been suggested that action may be taken by the Government under Rule 203 of the Assembly Rules which says that "if any question arises as to the interpretation of these rules otherwise than in connection with an election enquiry held under the provisions of these rules, the question shall be referred for the decision of the Government and its decision shall be final". If there is any legal difficulty in applying this rule, the Government may still redress the injustice by resorting to the comprehensive powers vested in them under section 42 of the Government of Mysore Act. If even that will not avail them, the extraordinary right of His Highness the Maharaja may be invoked".

As will be seen from the Law Secretary's note, the legal difficulties, the existence of which the "Hindu" concedes as being possible, are indeed great and it would appear that Government cannot, at this stage, exercise its interpretative jurisdiction with retrospective effect or issue (as was once seriously contemplated) a rule with similar effect under the Government's rule making powers. The suggestion that His Highness the Maharaja should use his prerogative in such a case obviously needs no consideration.

By adopting such extraordinary remedies, even if they were found to be legally available (which is not the case), the Government would not, I am afraid, get any credit for good intentions. On the other hand, they would be laying themselves open to the charge of interfering with the elections and yielding to the pressure of a political party, this time a party opposed to the one which some of the Returning Officers are alleged to have initially favoured. If such remedies were once adopted, there is no guarantee that they would not be invoked again, on one pretext or another, in the fuvure stages of this election or in future elections.

We were at one time of the view that it might be possible for the persons affected to challenge the decisions of the Returning Officer before a Civil Court and obtain a pronouncement of which Government could take notice. But as this does not seem to be permissible under our Rules, they have necessarily to wait and take proceedings before the Election Tribunals. It is true that this procedure will be costly and may not be regarded as entirely satisfactory, but so far as I can see, there are no feasible shortcuts.

Although as many as 87 petitions have been received by Government complaining of the Returning Officers' decisions, the number of seats filled as a result of rejections on what are alleged to be technical or trivial grounds is 35 (31 general and 4 Muslim seats) and if the decisions of the Returning Officers are set aside in all these cases by the Election Commissioner, the number of constituencies in which re-election will have to be held will not exceed 26 -- 22 general and 4 Muslim constituencies.

I would adhere to the decision which we have already announced, leaving it to the parties, if they wish to do so, to establish their claims for elegibility before an Election Commissioner.

At the same time, it seems necessary to take steps for ensuring that, in the future stages of the election proceedings, no room is given for the bona fides and impartiality of Government Officers being called in question or even suspected. A circular memorandum drawing the attention of all election officers to the relevant rules and the need for maintaining an attitude of detachment has just been issued.

As it is proposed to publish the names of the first batch of returned candidates immediately, election petitions will be coming in as soon as these candidates have filed their statement of election expenses and the fact has been notified. If the

election petitions (as seems probable) are fairly large in number a Special Election Commissioner may be appointed in consultation with the Chief Justice and arrangements made for him to commence work as early as possible.

3/2/41

Contains sealed Cover containing II Minute

General and Revenue Secretariat | File No. of 194 | [App. F. III-2

Serial No.

NOTE—Contn. Sheet.

Vasantha Mahal,

Mysore, 29th January 1941.

My dear Madhava Rau,

I am desired to acknowledge the receipt of your note on the subject of the rejection of certain nominations for the election to the Representative Assembly and Legislative Council, which I have submitted to His Highness the Maharaja.

I am at the same time desired to forward the memorial from certain members of the Mysore State Congress, of which I have already sent you a copy, for such action as the Government may think desirable.

Yours sincerely,

Chief Secy
MRS. 30/1/41

Sd.

30/1/41

(2nd member)

I shall first wish a note on working of rules in the 30.1.41

Chief Secretary

30/1

A note on the allegations made in the earlier portion of the Memorial is herewith submitted.

4-2-41

(1st member)
Dewan)

1.2.41

My note & that of the Law Secy are also kept in the file 3/2/41

4 . 630
Ind.

7th February 1941.

My dear Sir Charles,

I shall be obliged if you will kindly let me know if the draft endorsement proposed to be issued to the signatories of the Congress memorial is suitable. It seems to me that some such reply is necessary.

Yours sincerely,

Sd. Eliza M. Ismail

ENDORSEMENT.

With refernce to their memorial, dated the 26th January 1941, addressed to His Highness the Maharaja, Mr. K.T.Bhashyam and other signatories are informed that the earlier portion of the memorial, which contains misstatements of fact and allegations which have been proved to be baseless by a special Committee and Enquiry Officer, appointed to enquire into them, are quite irrelevant in connection with their present prayer.

As regards this, the position of Government was explained at the last meeting of the Legislative Council and it was stated that it would not be proper or legal for Government to undertake the functions of an election tribunal. The question has been examined again in detail especially with reference to the statement made in the memorial that the Government have the power vested in them to interpret the rules properly and direct re-scrutiny of the nomination papers, and they have come to the conclusion that they have no such power and that the parties must be left to establish their claims for eligibility by means of election petitions provided under the law. Government, therefore, regret they are unable to comply with the request of the memorialists.

By Order,

Id. B.T.K.

Chief Secretary to Government. 7.2.41

May be submitted to the Dewan as he wished to scrutinise the draft again.

Id. M.M.

First Member of Council. 7.2.41

PRIVATE SECRETARY MYSORE

Vasantha Mahal,
Mysore,
9th February 1941.

C. 3831
Qu.

My dear Mirza,

With reference to your letter No. H. 630, of the 7th instant, I am desired to say that His Highness the Maharaja has approved of the draft endorsement which you propose to issue to the signatories to the Congress memorial.

As you have been good enough to ask me to criticise the drafting of the endorsement, I would venture to suggest the amendments indicated in the copy which I enclose.

Yours sincerely,

Chief Secy,

Please [illegible]

BNR

10-2-41

Draft further revised by Dewan
CB issue
[illegible]

ISSUED.

ENDORSEMENT.

With reference to their memorial, dated the 26th January 1941, addressed to His Highness the Maharaja, Mr. K.T. Bhashyam and other signatories are informed that the earlier portion of the memorial, which contains misstatements of fact and allegations which have been proved to be baseless by a special Committee and an Enquiry Officer, appointed to enquire into them, is quite irrelevant in connection with their present prayer.

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By Order,

Chief Secretary to Government.

OM.

G.R.S. III—3]

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

A copy of the endorsement as finally issued to Mr. K.T. Bhashyam and the other memorialists is submitted for perusal.

12/7/41

First Member) 12/7/41

Second Member) 12.2

13/2

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

Serial No.

Endorsement No. 3149/C.B. dated the 10th February 1941. issued to Mr. K.T.Bhashyam and other Congress memorialists.

Subd. The Assistant Secretary, Dewan's Office, phoned to say that the Dewan desires that the Govt. reply may be released to the Press in Kannada and in English. Copies will accordingly be sent to the Publicity Office now.

13/2

Yes
(3/2/41

DAILY NEWS February 16, 1941

A PUFF OF SMOKE

—:o:—

I am glad that at long last, Government of Mysore, have condescended to send a communication to Mr. K. T. Bhasyam, President of Mysore Congress. This event is to be noted particularly; because, before this, ever so many letters were written by Congress President to the Chief Secretary to the Government complaing about this irregularity or that in elections. To none of them was any reply sent from that end. And naturally Congress people bitterly complained against this lack of courtesy. Not merely lack of courtesy was it but also a grave omission of duty.

x x x

Even in this reply the Government fight shy of addressing Mr. Bhasyam as President of Congress. This sort of shyness is unnecessary. They cannot ignore the Mysore State Congress and its President. After all nothing would be lost if the Government send their communications promptly to Congress and its President. On the other hand the Government prestige would rise by observing all decorum in the matter of correspondence. I hope in future atleast the Government would observe all these rules of courtesy in correspondence, even to their opponents. A Congress organisation or its President would not lose anything, if Government omit these formalities But the man in the street would think that small minds sometimes influence Governmental actions. And no Government should give room for any such idea to spread.

x x x.

I am not going to discuss in this column the merits of the memorial and the reply of Government thereto. It is justly the province of my Editor to deal with it exhaustively. But I cannot omit making one remark and that is this memorial and the reply should give a fresh start for a good—understanding between Government and Congress. The Congress has fought well, has fought cleanly, has met with adverse circumstances. But for all that today it shines resplendent in the glory of its sacrifice. It is time for Government to change their mind and their heart with regard to Congress. They should play the game and behave like sportsmen. How long should this stalemate continue? How long should the Congress wander in the wilderness? The fight for responsible Government has to go on consistently and continuosly. And this fight need not create an unbridgable gulf between Government and the Congress. I pray for a change of heart on the side of Government.

Why was n't
mi dom:
M. Rao has
to address
the President
of the Congress.

MR
18-2-41

Chesney)
19/2

Explained
in person to
the Dewan
MR
19/2/41

2 political cuttings:
Daily News' comment on
Govt reply to Congress memorial
which secretary?
17/2

CHIEF SECRETARY
17 FEB 19
GOVT. OF MYSORE.

This thing
reads almost
as if Mr. Bhasyam
wrote it
MR
17/2/41

First Member)
Dewan)
17/

MR
19/2

Daily News

Bangalore City—February 16, 1941

CONGRESS MEMORIAL AND AFTER

The Government's reply to the Mysore Congress Memorial which we have published in our yesterday's issue contains some legal aspects which deserve close examination. Under section 203 of the Mysore Representative Assembly rules and also under section 182 of the Legislative Council rules the Government have power to interpret rules otherwise than in connection with an election enquiry held under the provisions of those rules and questions which have to be interpreted so shall be referred to them for decision and their decision shall be final for purposes of elections. But the Government have come to the conclusion that they have no such power and that the parties must be left to establish their claims by means of election petitions for which provision is made under the law. In other words as many as eighty to ninety candidates to the Representative Assembly and Legislative Council sought redress under these provisions by filing petitions for fair and equitable interpretation of the returning Officers rejection of nomination papers. It is contended that the Returning Officers rejected these nomination papers on the ground that they were filled wrongly in particulars and that they were illegal as such. Looking at the various sections which empower Government to intervene in cases where different interpretations are given contrary to the purpose of the law, one can surmise that the wholesale rejection of nomination papers numbering as many as ninety on purely technical grounds was wholly ultra vires of the purposes for which the rules were made.

The Government have certainly powers to interpret the rules where redress is needed and Schwabe C. J. in 1923 Madras 475 has clearly enunciated that rejection of nomination paper for want of number of ward and for want of thumb impression of the seconder is invalid. In that case Schwabe C. J. has something direct to say with regard to the case in question.

> The Plaintiff (in this case a candidate whose nomination paper was rejected on purely technical grounds) tried to refer the question of the rejection of his nomination which was a question of the interpretation of rules to the local Government but the local Government declined jurisdiction. The result is that there is no conclusive ruling. I venture to express a hope that it may be possible for the local Government acting under Section 36 of the Act to cancel the rejection of this nomination and direct the election to be held with the plaintiff as the candidate."

This case is on all fours with ours where nearly 90 candidates sought interpretation of the rules by the Government and whose cases were again rejected on the ground that the Government had no powers under the law to interfere. The above case quoted by us proves beyond doubt that the Government had the necessary legal powers to interfere and in this case they did not propose to do so which was all the more regrettable.

The post election remedy by way of election petitions to which the Government refer in their order is on the very face of it cumbersome and costly. Moreover the right of filing an election petition accrues only after the elections are held and in the case of the present rejections the elections had not been held, when the nomination papers were rejected. As Wallace J. rightly observes in 1923 Madras 475 "It is no consolation to tell him that he can stand for some other election. It is no remedy to tell him that he must let the election go on and then have it set aside by petition and have a fresh election ordered. The fresh election may be under altogether different conditions and may bring forward an array of fresh candidates." holds good also in the present case.

Having refused remedy the Government now ask the aggrieved party to file election petitions which they say is the only way to seek redress. We fail to understand this argument. When the right to file petitions has not accrued how can these people rush to election tribunals?

We are sorry that the Government took this attitude when ninety persons of an important political party sought redress under the provisions of law and not outside it. Something might have been done to avoid numerous petitions which would involve expenditure and hardship both to the petitioners and Government.

General & Revenue Secretariat.

No.3149/C.B. Dated, Bangalore, the 10th February 1941.

ENDORSEMENT.

To

K.T. Bhashyam, Esq., B.A.,B.L.,
Cottonpet, Bangalore City, and
other memorialists.

- - -

With reference to their memorial, dated the 26th January 1941, addressed to His Highness the Maharaja, Mr. K.T. Bhashyam and the other signatories are informed that the earlier portion of the memorial contains misstatements of fact and allegations which have been proved to be baseless by a Special Committee and a high Judicial Officer, appointed to enquire into them, and is quite irrelevant in connection with their present prayer.

As regards the prayer itself, the position of Government was explained at the last meeting of the Legislative Council and it was stated that it would not be proper or legal for Government to undertake the functions of an election tribunal. The question has been examined again in detail, especially with reference to the statement made in the memorial that the Government have the power vested in them to interpret the rules and direct re-scrutiny of the nomination pepers, and Government have come to the conclusion that they have no such power and that the parties must be left to establish their claims by means of election petitions for which provision is made under the law. Government, therefore, regret they are unable to comply with the request of the memorialists.

By Order,

(Sd.) M. Venkatesa Iyengar.

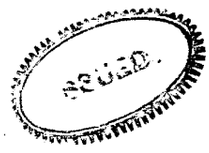
Ag. Chief Secretary to Government.

PRESS TABLE.

M. Venkatesa Iyengar

Ag. Chief Secretary to Government.

XXXX 3149/C.B.



10th Febry. 41

CS 145-40-2

ENDORSEMENT.

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K.T. Bhashyam, Esq., B.A.,B.L.,
Cottonpet, Bangalore City, and
other memorialists.

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By Order,

10/2/41.

Ag. Chief Secretary to Government.

ENDORSEMENT.

To

K.T. Bhashyam, Esq.,B.A.,B.L.,
Cottonpet, Bangalore City and
other memorialists.

- - -

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As regards the prayer itself, the position of Govt. was explained at the last meeting of the Legislative Council and it was stated that it would not be proper or legal for Govt. to undertake the functions of an election tribunal. The question has been examined again in detail, especially with reference to the statement made in the memorial that the Govt. have the power vested in them to interpret the rules and direct re-scrutiny of the nomination papers, and Govt. have come to the conclusion that they have no such power and that the parties must be left to establish their claims by means of election petitions for which provision is made under the law. Govt., therefore, regret they are unable to comply with the request of the memorialists.

By Order,

Ag. Chief Secy. to Govt.

EXI No. 3149/C.B.

GENERAL AND REVENUE SECRETARIAT

Bangalore, 10th Febry. 1941.

ENDORSEMENT.

To

K.T. Bhashyam, Esq., B.A.,B.L.,
Cottonpet, Bangalore City and
- - - other memorialists.

With reference to their memorial, dated the 26th January 1941, addressed to His Highness the Maharaja, Mr. K.T. Bhashyam and other signatories are informed that the earlier portion of the memorial, ~~which~~ contains misstatements of fact and allegations which have been proved to be baseless by a Special Committee and ~~an Enquiry~~ a high judicial Officer, appointed to enquire into them, and is quite irrelevant in connection with their present prayer.

As regards the prayer itself, the position of Government was explained at the last meeting of the Legislative Council and it was stated that it would not be proper or legal for Government to undertake the functions of an election tribunal. The question has been examined again in detail, especially with reference to the statement made in the memorial that the Government have the power vested in them to interpret the rules and direct re-scrutiny of the nomination papers, and ~~the~~ Government have come to the conclusion that they have no such power and that the parties must be left to establish their claims by means of election petitions for which provision is made under the law. Government, therefore, regret they are unable to comply with the request of the memorialists.

By Order,

Ag. Chief Secretary to Government.

ENDORSEMENT.

With reference to their memorial, dated the 26th January 1941, addressed to His Highness the Maharaja, Mr. K.T. Bhashyam and other signatories are informed that the earlier portion of the memorial, which contains misstatements of facts and allegations which have been proved to be baseless by a special Committee and Enquiry Officer, are quite irrelevant in connection with their present prayer.

As regards this, the position of Government was explained at the last meeting of the Legislative Council and it was stated that it would not be proper or legal for Government to undertake the functions of an election tribunal. The question has been examined again in detail especially with reference to the statement made in the memorial that the Government have the power vested in them to interpret the rules properly and direct re-scrutiny of the nomination papers, and they have come to the conclusion that they have no such power and that the parties must be left to establish their claims for eligibility by means of election petitions provided under the law. Government, therefore, regret they are unable to comply with the request of the memorialists.

By Order,

Chief Secy. to Govt.